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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

JUN 13 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Implementation of Section 309(j) ) PP Docket No. 93-253  
of the Communications Act )  
Competitive Bidding )

Petition for Reconsideration of U.S. Intelco Networks, Inc.

INTRODUCTION

U.S. Intelco Networks, Inc. ("USIN"), on its own behalf and on behalf of its Independent Telephone Company ("ITC" or "Independent") owners and users, by its attorneys and pursuant to Section 1.429 of the Commission's Rules,<sup>1</sup> respectfully seeks reconsideration of the Fourth Report & Order ("Order") released herein on May 10, 1994.<sup>2</sup> While the Order does, in large part, comply with Congressional directives, USIN submits that the Order fails to address the Commission's mandate to ensure meaningful opportunities for rural telephone companies to participate in the provision of new radio-based services.

<sup>1/</sup> 47 C.F.R. § 1.429.

<sup>2</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Fourth Report & Order, released May 10, 1994; See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, Second Report & Order, released April 20, 1994; 59 Fed. Reg. 22980 (May 4, 1994) ("Order"). See Notice of Proposed Rulemaking, PP Docket 93-253, FCC 93-455, released October 12, 1993. ("NPRM").

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In support thereof, USIN shows the following: USIN is wholly owned by 282 ITCs and provides customer database services, calling card billing validation services, 800 RESPORG services, revenue administration services and other related database services to over 1000 Independents nationwide. USIN is equally committed to assisting rural telecommunications providers in bringing new spectrum-based services, including IVDS, to rural America. Having submitted Comments and Reply Comments in this proceeding, USIN's interest in auction design and implementation is a matter of record.<sup>3</sup>

USIN recognizes that efforts to implement a wholly novel method of spectrum licensing represent a significant investment of time and effort on the part of the Commission, and applauds the conscientious thought that Commission staff has given to developing appropriate treatment for rural telephone companies.

However, USIN is concerned that certain statements in the Fourth Report & Order reflect a failure to adequately address a Congressional mandate to ensure the opportunity for participation by each category of the entities identified in the statute. These "designated entities" include rural telephone companies, and were identified in "plain language" as warranting special procedures to assure them the opportunity to participate in the provision of

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<sup>3/</sup> See Comments of U.S. Intelco Networks, Inc., filed herein November 10, 1993; Reply Comments of U.S. Intelco Networks, Inc., filed herein November 24, 1993.

spectrum-based services. See Fourth Report & Order, para. 40; see also 47 U.S.C. § 309(j)(4)(D) (ensure opportunities for designated entities); 47 U.S.C. § 309(j)(3)(B) (auction methodologies shall promote, inter alia, economic opportunity and competition by disseminating licenses to a variety of applicants, including rural telephone companies).

#### **DISCUSSION**

USIN is concerned that the Fourth Report & Order elects not to provide bidding credits or other preferences to rural telephone companies, based on the argument that preferences are unnecessary given the relatively modest build-out costs for systems in the IVDS services. See Fourth Report & Order, para. 40, n.66. USIN is concerned that the Commission has apparently determined that the Congressional mandate, with respect to rural telephone companies, can be fulfilled without any rational consideration of the economic characteristics of rural telephone companies, in the way that the economic characteristics of small, minority and women-owned companies are considered. Fourth Report & Order, para. 40. USIN submits that this position is contrary to the language and intent of the statute, represents an irrational and unjustified analysis, and is otherwise contrary to the public interest.

In the Fourth Report & Order, the Commission provides no rational justification for its belief that no preferences are needed to address this mandate. Specifically, the Commission

states:

"We have decided not to provide bidding credits (or other separate preferences) to rural telephone companies bidding on IVDS spectrum because we conclude that, given the relatively modest build-out costs for systems in this service, such preferences are unnecessary. . . Rural telephone companies will, however, . . . qualify for installment payments if they satisfy the eligibility criteria for small businesses." Fourth Report & Order, para. 40, n. 66.

USIN submits that the Commission should reconsider this decision for the following reasons: 1) the Commission erroneously states that low build-out costs,<sup>4</sup> which come into play after a license is awarded, render unnecessary preferences intended to compensate for the economic disadvantages faced by smaller entities when competitive bidding is used to award the license; 2) the Commission's statement that rural telephone companies are eligible for installment payments if they qualify as small businesses is excessively restrictive, given the existing definition of a small business.

The fact that build-out costs may be "relatively modest" does not result in service participation by rural telephone companies where licenses are awarded via competitive bidding. Regardless of

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<sup>4</sup> USIN notes that the Fourth Report & Order does not provide any analysis or information with respect to the expected build-out costs, the bidding power of rural telephone companies or other designated entities, the relationship to the costs of service to the costs of a license, or the extent to which large service areas such as the MSAs and RSAs in which IVDS will be licensed are expected to receive service in lower density rural areas due to lower build-out costs, absent preferences for rural telephone companies.

the costs of building out an IVDS network, Congress was concerned that appropriate preferences be utilized to address the disadvantages smaller entities face in bidding against larger deep-pocket players, and thus prevent competitive bidding from resulting in excessive concentration. See 47 U.S.C. § 309(j)(3)(B); Fourth Report & Order, para. 34.

Given this Congressional mandate, it is disturbing that any discussion of the economic characteristics of rural telephone companies is completely absent from the Fourth Report & Order. Especially telling is the Commission's decision to provide for installment payments for smaller businesses, but not rural telephone companies, see Fourth Report & Order, para. 36, which the Commission also recognizes as "small." Second Report & Order, para. 282.

Installment payments, however, will not be available to many rural telephone companies under the existing rules. The Commission's auction rules currently define a "small business" as one with less than \$6 million in net worth, and less than \$2 million in net profits. 47 C.F.R. § 1.2110(b); Second Report & Order, para. 267. However, many rural telephone companies, due to the capital costs required to provide the local exchange network, have net worth figures higher than this, without any concomitant increase their ability to successfully participate in spectrum auctions.


The Commission has failed to give any consideration to the fact that while rural telephone companies have been consistently recognized and treat as small, they do not qualify as "small businesses" under the Commission's current definition. Moreover, the Commission has failed to address the fact that Congress identified rural telephone companies as a distinct designated entity group in need of preferential measures when bidding for spectrum against larger entities. The proffered justification for providing no consideration in the IVDS auctions to rural telephone companies is unsustainable - low build-out costs do not address the Congressional mandate with respect to rural telephone company participation in auctions.

#### CONCLUSION

For the reasons set forth above, USIN respectfully requests that the Commission reconsider the Order in order to respond to both Congressional directives and the public interest with regard to rural telephone company participation in spectrum auctions.

Respectfully submitted,  
U.S. INTELCO NETWORKS, INC.

By:

  
Stephen G. Kraskin  
Charles D. Cosson

Kraskin & Associates  
2120 L Street, N.W.  
Suite 810  
Washington, D.C. 20037  
(202) 296-8890

Its Attorneys

Date: June 13, 1994

**CERTIFICATE OF SERVICE**

I, Charles D. Cosson, hereby certify that copies of the foregoing Petition for Reconsideration of U.S. Intelco Networks, Inc. were served on the 13th day of June, by first class, U.S. mail, postage prepaid, to the following:

  
Charles D. Cosson

Chairman Reed Hundt \*  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, DC 20554

Commissioner James H. Quello \*  
Federal Communications Commission  
1919 M Street, NW, Room 802  
Washington, DC 20554

Commissioner Andrew C. Barrett \*  
Federal Communications Commission  
1919 M Street, NW, Room 826  
Washington, DC 20554

Commissioner Rachelle Chong \*  
Federal Communications Commission  
1919 M Street, NW, Room 844  
Washington, DC 20554

Commissioner Susan Ness \*  
Federal Communications Commission  
1919 M Street, NW, Room 832  
Washington, DC 20554

Karen Brinkmann, Special Assistant \*  
Office of Chairman Reed Hundt  
Federal Communications Commission  
1919 M Street, NW, Room 814  
Washington, D.C. 20554

Rudolfo M. Baca, Acting Legal Advisor \*  
Office of Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, NW, Room 802  
Washington, DC 20554

Byron F. Marchant, Senior Legal Advisor \*  
Office of Commissioner Andrew C. Barrett  
Federal Communications Commission  
1919 M Street, NW, Room 826  
Washington, DC 20554

Richard K. Welch, Legal Advisor \*  
Office of Commissioner Chong  
Federal Communications Commission  
1919 M Street, NW, Room 844  
Washington, DC 20554

\* Via Hand Delivery

Gregory J. Vogt, Legal Advisor \*  
Common Carrier Bureau  
Federal Communications Commission  
1919 M Street, NW, Room 518  
Washington, DC 20554

William E. Kennard, General Counsel \*  
Office of General Counsel  
Federal Communications Commission  
1919 M Street, NW, Room 614  
Washington, DC 20554

Mr. Donald Gips, Deputy Chief \*  
Office of Plans and Policy  
Federal Communications Commission  
1919 M Street, NW, Room 822  
Washington, DC 20554

Ralph Haller, Chief \*  
Private Radio Bureau  
Federal Communications Commission  
2025 M Street, NW, Room 5002  
Washington, DC 20554

International Transcription Services \*  
Federal Communications Commission  
1919 M Street, NW, Room 246  
Washington, DC 20554

Stephen E. Coran, Esq.  
Steven A. Lancellotta, Esq.  
Rini & Coran, P.C.  
1350 Connecticut Avenue, NW, Suite 900  
Washington, DC 20036  
Counsel for Kingswood Associates and American Group

Quentin L. Breen  
3 Waters Park Drive, Suite 231  
San Mateo, CA 94403-1144

Lauren Battaglia, General Counsel  
E. Lee Elliott, General Counsel  
EON Corporation  
1941 Roland Clarke Place  
Reston, VA 22091-1405

Michael F. Morrone  
Keller and Heckman  
1001 G Street, NW, Suite 500 W  
Washington, DC 20001  
Counsel for Independent Cellular Consultants

Andrea L. Johnson  
Professor of Law at the California-Western School of Law  
Hopkins & Sutter  
888 Sixteenth Street, NW  
Washington, DC 20006

Edward R. Wholl and Jacqueline E. Holmes Nethersole  
NYNEX Corp.  
120 Bloomingdale Road  
White Plains, NY 10605



Peter Tannenwald  
Arent, Fox, Kintner  
and Kahn  
1050 Connecticut Ave, NW  
Washington, DC 20036-5339  
Counsel for Radio Telecom and Technology, Inc.

Harry Stevens, Jr., Partner, Federal IVD  
130 Chestnut Street  
Albany, NY 12210

Richard L. Vega, President  
Richard L. Vega Group  
235 Hunt Club Blvd.  
Longwood, FL 32779

David Cosson  
L. Marie Guillory  
National Telephone Coop. Association  
2626 Pennsylvania Avenue, NW  
Washington, DC 20037

Lisa M. Zaina, General Counsel  
Matthew L. Dosch, Manager Regulatory Affairs  
OPASTCO  
21 Dupont Circle, NW, Suite 700  
Washington, DC 20036

David L. Nace and Pamela Gist  
Lukas, McGowan, Nace & Gutierrez  
1819 H Street, NW, 7th Floor  
Washington, DC 20006  
Counsel for Alliance of Rural Area Telephone, Liberty Cellular, Inc. and Pacific  
Telecom Cellular, Inc.

John A. Prendergast  
Blooston, Mordkofsky, Jackson & Dickens  
2120 L Street, NW, Suite 300  
Washington, DC 20037  
Counsel for American Automobile Association, Chickasaw Telephone Company, Rocky  
Mountain Telecommunications Association and Western Rural Telephone Association

James U. Troup and Laura Montgomery  
Arter & Hadden  
1801 K Street, NW, Suite 400K  
Washington, DC 20006  
Counsel for Iowa Network Services, Inc. and Telephone Electronics Corporation

David L. Jones, Chairman  
Government and Industry Affairs  
Rural Cellular Association  
2120 L Street, NW, Suite 810  
Washington, DC 20037